Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2001

MONTGOMERY BLAIR SIBLEY, SR.,
Petitioner,

- against -

DAVID M. GERSTEN, JUAN RAMIREZ and JOSEPH NESBITT, in their capacities as Judges of the Florida Third District Court of Appeal,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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321P

QUESTIONS PRESENTED FOR REVIEW

The United States Court of Appeals for the Eleventh Circuit has held that the Due Process Clauses do not compel a written opinion by a Florida Appellate Court explaining its decision in relation to prior precedent. This holding raises two substantial federal question that warrant immediate review by this Court:

(i) Whether the Due Process Clauses of the Fifth and Fourteenth Amendments impose an obligation upon state court judiciary to consistently *respect* and apply the precedential effect of relevant prior decisions.

(ii) Whether the Due Process Clauses of the Fifth and Fourteenth Amendments impose an obligation upon state court judiciary to demonstrate such *respect* through logically defensible written opinions.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioner, Montgomery Blair Sibley, Sr., prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on March 13, 2001.

OPINIONS BELOW

The opinion of the Florida Third District Court of Appeals is reprinted in the appendix hereto, *Appendix-2, infra.* The opinion of the United States District Court for the Southern District of Florida is reprinted in the appendix hereto, *Appendix-4, infra.* The opinion of the Court of Appeals for the Eleventh Circuit is reprinted in the appendix hereto, *Appendix-8, infra.*

JURISDICTION

The judgment of the Court of Appeals for the Eleventh Circuit was entered on March 13, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in pertinent part, that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Constitution, Amendment V.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." U.S. Constitution, Amendment. XIV, § 1.

STATEMENT OF THE CASE

In the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida - Family Division, Petitioner sought an immediate hearing on the family court's *de facto* transfer of residential custody of two minor children from Petitioner to the minor children's mother without a hearing. When the family court refused to provide such a hearing or even grant an order confirming that denial, Petitioner sought writs of

mandamus and prohibition from the Florida Third District Court of Appeal to compel such a hearing. The Florida Third District Court of Appeal denied the petition, *per curiam*, without any explanation, refusing to detail the precedential basis of their decision.[1] *Appendix-2, infra.*

Consequently, Petitioner filed in the United States District Court for the Southern District of Florida an action against the three judges of the Florida Third District Court of Appeal for declaratory relief that such a ruling by the three judges – devoid of expression of legal or factual basis – violated his federal and state constitutional due process rights. *Sua sponte*, on the day of filing and before even an appearance by the properly served Defendants below, the District Court dismissed Petitioner's complaint for declaratory relief holding that it lacked subject

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[1] Such a practice has been the subject of much concern and condemnation by some of the Florida bar. *See*: *The Florida Bar News* - July 1, 2000, "Judicial Management Council panel rejects the abolition of [per curiam affirmances]".

matter jurisdiction over such a complaint.

Petitioner's complaint sought solely as relief pursuant to 42 U.S.C. §1983 a declaration from the District Court under the subject matter jurisdiction conferred on it by 42 U.S.C., Chapter 151 "Declaratory Judgments", §2201 "Creation of Remedy" that:

> the Defendants have an obligation to Plaintiff imposed by the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §9 and §21 of the Florida Constitution to specify the basis for their decision in this matter based upon relevant precedential decisions.

Significantly, Petitioner's complaint did not seek any sort of injunctive relief or damages against the Defendants from the District Court.

The District Court in its *sua sponte* order dismissing for lack of subject matter jurisdiction first concludes that judges "are absolutely immune from liability for damages for acts committed within their judicial discretion". The District Court then concluded that "[reviewing the "four corners" of [Petitioner]'s Complaint it is clear that the Defendants were acting within their judicial discretion when they denied [Petitioner]'s writs.

Accordingly, Defendants are entitled to absolute judicial immunity. Furthermore, because no declaratory decree was violated, [Petitioner] can not maintain this action under §1983. *Appendix-6.*

Though refusing to outright recognize the absurdity of such a holding by the District Court, on appeal the Eleventh Circuit reluctantly did note that "We have not held directly, and no statute has designated specifically, that a state judge is absolutely immune from a § 1983 action seeking declaratory relief". *Appendix-14.*

Turning then to the seminal issue of this Petition, the Eleventh Circuit held, after reviewing *de novo* the declaratory judgment complaint – and prohibiting the Petitioner from briefing this heretofore unraised issue – that:

> [Petitioner]'s complaint fails to state a claim under §1983 because he did not allege a cognizable deprivation. [Petitioner] argued that he had a right to rely upon consistently applied precedent of prior decisions. "[T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly

> judged." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433, 102 S.Ct. 1148, 1156, 71 L.Ed.2d 265(1982). **We do not find that the lack of a written opinion explaining the decision in relation to prior precedent is compelled by the Due Process Clause.** [Petitioner] failed to establish the first threshold for establishing entitlement to declaratory relief: a constitutional violation. (Emphasis added).

Appendix-17.

REASONS FOR GRANTING THE WRIT

This Court's review of the Eleventh Circuit's decision is warranted because the Eleventh Circuit (i) "decided an important federal question that conflicts with relevant decisions of this Court," Sup. Ct. R. 10(c), (ii) "decided an important federal question in a way that conflicts with the decision of . . . a United States court of appeals," Sup. Ct. R. 10(b); and (iii) "decided an important question of federal law that has not been, but should be, settled by this Court . . . ." Sup. Ct. R. 10(c).

The question, simply put, is whether due process places upon the judiciary the dual obligations of (i) premising decisions

upon precedent and (ii) enunciating that premising publicly to dispel through force of fidelity to precedent the appearance of arbitrary and capricious decision making.

Few issues could be more important to the people of these United States than that their disputes be resolved by a fair and impartial judiciary. That fairness and impartiality is severely placed in doubt when a court rules *ex cathedra* without explanation of its mandatory reliance upon established precedent.

As such, this Court must review the Eleventh Circuit's decision that "[w]e do not find that the lack of a written opinion explaining the decision in relation to prior precedent is compelled by the Due Process Clause."

I. The Decision below Conflicts with Precedents of this Court and the Court of Appeals Regarding the Obligations Placed by the Fifth and Fourteenth Amendments upon the Judiciary to Insure the Fundamental Right to Due Process of Law

In *Marbury v. Madison*, 5 U.S. 137 (1803) this Court recognized that inherent in every judicial decision was a declaration and interpretation of the relevant general principles of law. "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule." *Id.* at 177. The Eleventh Circuit has now relieved the judiciary of this obligation to "say what the law is".

Fundamental to this decision making process was that the enunciated law be subsequently applied to subsequently similarly situated litigants. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991). "But selective prospectivity also breaches the principle that litigants in similar situations should be treated the same, a fundamental component of stare decisis and the rule of law generally." *Id.* at 544.

Indeed, this principle of reliance upon enunciated precedent is at the backbone of our legal system. As most eloquently stated by Justice Joseph Story, *Commentaries on the*

Constitution of the United States §377-78 (1983):

> The case is not alone considered as decided and settled; but the principles of the decision are held, as precedents and authority, to bind future cases of the same nature. This is the constant practice under our whole system of jurisprudence. Our ancestors brought it with them, when they first emigrated to this country; and it is, and always has been considered, as the great security of our rights, our liberties, and our property. It is on this account, that our law is justly deemed certain, and founded in permanent principles, and not dependent upon the caprice or will of judges. **A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles.**
>
> This known course of proceeding, this settled habit of thinking, this conclusive effect of judicial adjudications, was in the full view of the framers of the constitution. It was required, and enforced in every state in the Union; and a departure from it would have been justly deemed an approach to tyranny and arbitrary power, to the exercise of mere discretion, and to the abandonment of all the just checks upon judicial authority. (Emphasis added.)

Here, the Eleventh Circuit, by approving the Florida Third District Court of Appeal's right to issue a ruling without written

opinion which confirmed the trial court's *de facto* transfer without a hearing of custody of Petitioner's minor children from him, has grossly deviated from the "view of the framers of the constitution" as to the obligations of the judiciary. Accord: *Anastasoff v. United States*, 223 F.3d 898 (8th Cir.), *vacated,* 235 F.3d 1054 (8th Cir. 2000) (en banc)[2].

II. The Due Process Guaranty of a "Fair and Impartial Hearing" is Meaningless If the Judiciary Can Act Arbitrarily and Capriciously with Impunity

Plainly, a litigant is entitled to "notice" and "opportunity to be heard". *Boddie v. Connecticut*, 401 U.S. 371, 377 (1970).

But just as plainly, what good are those enshrined rights if they are not bound up with an obligation upon the judiciary to decide the matter fairly and impartially? Indeed, if the judiciary

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[2] The vacation *en banc* in *Anastasoff* is based upon the contested issue becoming moot, not upon a retreat from the seminal principal of laws contained in the original panel decision. "The precedent from which we are departing should be stated, and our reasons for rejecting it should be made convincing clear." *Anastasoff* at 1062.

can mimic all the stigmata of a fair hearing only to be loosed from the ties which prevent Justice Story's "tyranny and arbitrary power" upon the "the abandonment of all the just checks upon judicial authority", due process means nothing.

Hence, for the Eleventh Circuit to enshrine the Florida State Court's ability to affirm *per curiam* without explanation as not prohibited "by the Due Process Clause" is to undue the very underpinning of due process. Indeed, "A more alarming doctrine could not be promulgated by any American court". *Id.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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A-2

IN THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT

JULY TERM, A.D. 2000

SEPTEMBER 8, 2000

CASE NO.: 3D00-2492

LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY,

Appellant /Petitioner

vs.

BARBARA SIBLEY,

Appellee /Respondent

_____/

Following review of the petition for writs of prohibition and mandamus, and the response thereto, it is ordered that said petition is hereby denied.

Upon consideration of the request for attorney's fees filed by respondent, it is ordered that said request is hereby denied without prejudice to renew in the trial court.

GERSTEN and RAMIREZ, JJ., and NESBITT, Senior Judge, concur.

Copies to:

Montgomery Blair Sibley
Bette Ellen Quiat
Hon. Maxine Cohen Lando

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 00-3665-CIV-MORENO

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

vs.

DAVID M. GERSTEN; JUAN RAMIREZ; and JOSEPH NESBITT, in their capacities as Judges of the Florida Third District Court of Appeal,

Defendants.
_____/

ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE came before the Court upon a *sua sponte* review of the record. *Fitzgerald v. Seaboard Sys. R.R., Inc.*, 760 F.2d 1249, 1251 (11th Cir.1985).

Plaintiff has filed suit against a panel of judges of the Florida Third District Court of Appeals claiming that his constitutional right to rely upon consistently applied precedential

case law and his fundamental rights as a father were denied by the Third District Court of Appeals issuance of an opinion denying his petition for writs of prohibition and mandamus.

It is well-settled law that judges are absolutely immune from liability for damages for acts committed within their judicial discretion. *Stump v. Sparkman*, 435 U.S. 349, 359 (1978). A judge will be acting within his judicial discretion if the act complained of is a judicial act and the judge has subject matter jurisdiction at the time he acted. *Id.* at 356-60. This absolute immunity is intended to permit judges to act independently and without fear of the consequences. *Id.* at 355. Furthermore, judicial immunity will protect judges even if the action taken was in error, done maliciously or in excess of his authority. *Id.*

In the past, Plaintiffs were permitted to seek prospective declaratory or injunctive relief against judges under 42 U.S.C. §1983. See *Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984). However, in 1996 Congress passed the Federal Courts Improvement Act ("FCIA") which amended § 1983 to state that

"in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. The effect of the FCIA was to legislatively reverse *Pulliam* and limit the injunctive relief available against judicial officers. *Bolin v. Story*, 2000 WL 1263827 (11th Cir. Sept. 6, 2000); *Jones v. Newman*, 1999 WL 493429 (S.D.N.Y. June 30, 1999).

Reviewing the "four corners" of Plaintiff's Complaint it is clear that the Defendants were acting within their judicial discretion when they denied Plaintiff's writs. Accordingly, Defendants are entitled to absolute judicial immunity. Furthermore, because no declaratory decree was violated, Plaintiff can not maintain this action under §1983. Accordingly it is

ADJUDGED that because this Court is without subject matter jurisdiction this action is hereby DISMISSED.

DONE AND ORDERED in Chambers at Miami, Florida,

this 3rd day of October, 2000.

Federico A. Moreno
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-15833
Non-Argument Calendar

D.C. Docket No. 00-03665-CV-FAM

MONTGOMERY BLAIR SIBLEY

Plaintiff-Appellant,

versus

DAVID M. GERSTEN, JUAN RAMIREZ, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida.

(March 13, 2001)

Before ANDERSON, Chief Judge, BIRCH and DUBINA, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley appeals the dismissal of his *pro se* 42 U.S.C. § 1983 complaint pursuant to Federal Rule of Civil

Procedure 12(h)(3). Because Sibley failed to allege a cognizable violation of his constitutional rights, he is not entitled to declaratory relief, and the district court lacked subject matter jurisdiction. Accordingly, we AFFIRM the district court's dismissal.

I. BACKGROUND

Sibley's civil rights action originates from a child custody case. After years of residing in Florida, Sibley, primary residential custodian of his two minor children, informed his ex-wife that he intended to move the children to the Washington, D.C. area. Sibley continued his relocation efforts, and, in accordance with an order received from a Florida circuit court, he gave his ex-wife a 45-day written notice of his intent to relocate the children.

Upon receipt of the relocation notice, Sibley's ex-wife filed an emergency motion for temporary custody and prohibition of removal, and Sibley filed a response and several of his own motions. The trial court set the matters for hearing approximately three months after receipt of the motions. Sibley considered the

trial court's assigned hearing date on the pending motions to be a "*de facto*" granting of his ex-wife's motion, and, therefore, sought judicial review by filing a Petition for Writs of Prohibition and Mandamus in the Florida Third District Court of Appeal. *RI -1-3 at ¶15.*

This dispute began when that three-judge panel denied Sibley's petition without opinion. Sibley, a Florida attorney, filed his civil rights action against the three Florida appellate judges: David M. Gersten, Juan Ramirez, and Joseph Nesbitt in their official capacities. He alleged that the judges violated his rights under the Fifth and Fourteenth Amendments of the United States Constitution, Article I, §§ 9 and 21 of the Florida Constitution to rely upon the consistently applied precedential effect of relevant prior decisions, and impinged upon his fundamental rights as a father by issuing a decision in his case without explanation. He sought a declaratory judgment that their issuance of a decision without explanation was unconstitutional as applied to him.

The district court, *sua sponte*, dismissed Sibley's

complaint for lack of subject matter jurisdiction based upon absolute judicial immunity of the defendants. The district court found that, after reviewing the "four corners" of Sibley's complaint, it was clear that the defendants were acting within their judicial discretion when they denied his writs and were, therefore, entitled to absolute judicial immunity. *R1-5-2.* Further, the district court concluded that, because no declaratory decree was violated, Sibley could not maintain his action under § 1983.

Within ten business days, Sibley filed a motion to alter judgment and to expedite ruling. In his motion, Sibley argued that he was neither seeking injunctive relief nor damages from the defendant judges pursuant to § 1983, but solely declaratory relief from the district court that his constitutional rights had been violated. Sibley argued that the district court's order finding that his § 1983 action could not be maintained because no declaratory decree was violated invalidated § 1983 by precluding him from seeking declaratory relief as a required predicate to injunctive

relief. The district court denied the motion; this appeal followed.

II. DISCUSSION

On appeal, Sibley argues that he was not seeking any damages or injunctive relief against the defendants, but declaratory relief. Therefore, he contended that the district court erred in its dismissal of his § 1983 action based on lack of subject matter jurisdiction because of absolute judicial immunity. Sibley argues that the district court erred in finding that, because no declaratory decree was violated, he could not maintain his § 1983 action against the Florida appellate judges.

The district court raised the issue of subject matter jurisdiction *sua sponte*. Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3). If the parties do not raise the question of lack of jurisdiction, it is the duty of the federal court to determine the matter *sua sponte*. *Fitzgerald v. Seaboard Svs.*

R.R.. Inc., 760 F.2d 1249, 1251 (11th Cir. 1985) (per curiam).

The propriety of the district court's dismissal of a complaint for lack of subject matter jurisdiction is a question of law that we review *de novo*. *Hall v. United States Dep't of Veterans' Affairs*, 85 F.3d 532, 533 (11th Cir. 1996) (per curiam). "Because the case was dismissed on the basis of the complaint, we must look to the face of that pleading to determine whether subject matter jurisdiction existed, considering the allegations contained therein as true." *Id.*

"Judges are entitled to absolute immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the 'clear absence of all jurisdiction.'" *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (per curiam)(quoting *Stump v. Sparkman*, 435 U.S. 349, 356-57, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978)). In *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984), the "Supreme Court held that judicial immunity did not protect a state judge from claims for injunctive relief in a § 1983 action." *Id.* at

1240. In 1996, Congress passed the Federal Courts Improvement Act, amending § 1983 and protecting judges from injunctive relief, to provide that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. We have not held directly, and no statute has designated specifically, that a state judge is absolutely immune from a § 1983 action seeking declaratory relief. In *Bolin*, we noted that the 1996 amendment to § 1983 would limit the relief available to plaintiffs to declaratory relief. *See: Bolin*, 225 F.3d at 1242.

In reaching its holding in *Pulliam* and deciding not to grant state judges immunity from injunctive relief, we recognize the Supreme Court's determination that, "the limitations already imposed by the requirements for obtaining injunctive relief 'severely curtail the risk that judges will be harassed and their independence compromised by the threat of having to defend

themselves against suits by disgruntled litigants.'" *Id.* at 1240 (quoting *Pulliam*, 466 U.S. at 537-38, 104 S.Ct. at 1970). In *Bolin*, we relied on the existing limitations imposed by the requirements for obtaining declaratory relief and declined to address whether the defendant judges and prosecutors enjoyed absolute immunity from declaratory relief claims brought in a Bivens action. *See: Id.* at 1242. We held that, because the district court's dismissal of the plaintiffs' § 1983 claims against the judges and prosecutors could clearly be upheld on the ground that there was an adequate remedy at law, and the plaintiffs therefore were not entitled to declaratory relief, the district court was correct in dismissing their claims, albeit for a different reason. *Id.* at 1243.

In *Bolin,* we analyzed the following prerequisites that a plaintiff must establish in order to receive declaratory relief: (1) "a violation," (2) "a serious risk of continuing irreparable injury if the relief is not granted," and (3) "the absence of an adequate remedy at law." *Id.* at 1243 *see: Newman v. Alabama*, 683 F.2d 1312, 1319 (11th Cir. 1982). In this case, Sibley sought a

declaratory judgment that the state court's denial of his petition without an opinion violated his rights under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §§ 9 and 21 of the Florida Constitution as articulated in *Anastasoff v. United States*, 223 F.3d 898 (8th Cir.), *vacated,* 235 F.3d 1054 (8th Cir. 2000) (en banc), "thereby (i) violating [his] ... rights to rely upon the consistently applied precedential effect of relevant prior decisions and (ii) impinging upon [his] fundamental rights as a father." *R1-1, ¶ 1.* In his complaint, Sibley relies exclusively on *Anastasoff* to support his contention that his constitutional rights have been violated because the court failed to write an opinion. Id. at 4, ¶ 19. In *Anastasoff*, the Eighth Circuit addressed the constitutionality of a portion of its local rule that said that unpublished opinions had no precedential effect. 223 F.3d at 905. *Anastasoff* is from a non-binding circuit, has been vacated, and does not stand for the legal premise that Sibley contends. Sibley's complaint fails to state a claim under § 1983 because he did not allege a cognizable deprivation. Sibley argued

that he had a right to rely upon consistently applied precedent of prior decisions. "[T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433, 102 S.Ct. 1148, 1156, 71 L.Ed.2d 265 (1982). We do not find that the lack of a written opinion explaining the decision in relation to prior precedent is compelled by the Due Process Clause. Sibley failed to establish the first threshold for establishing entitlement to declaratory relief: a constitutional violation.

Accordingly, the district court properly dismissed Sibley's § 1983 claim for lack of jurisdiction because he failed to establish a violation of his constitutional rights and entitlement to declaratory relief.

AFFIRMED.